



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2004

Ms. Jennifer Soldano
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2004-6909

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207506.

The Texas Department of Transportation (the "department") received a request for "Litter-er" information, including "the date, time, location, plate number, car make, what was littered, who littered and comments, and any other additional public information about the complaining party" during 2003 and 2004. The requestor also seeks "[a]ll written correspondence or any investigations of people complaining about people who littered on Texas roadways" for the same time period. You claim that the requested information is excepted from disclosure under section 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Section 552.130 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information is not excepted from disclosure under section 552.130 and may not be withheld on that basis.

We note, however, that some information in one of the submitted documents is excepted from disclosure under section 552.101 of the Government Code in conjunction with chapter 730 of the Transportation Code.² Section 730.004 of the Transportation Code prohibits the release of "personal information" about any person obtained in connection with a motor vehicle record by an agency that maintains or compiles motor vehicle records, except under certain circumstances not present here. Under section 730.003, "personal information" means information that identifies a person, including the person's social security number, driver identification number, name, address, (but not the zip code), and telephone number. *See* Transp. Code § 730.003(6). In this case, we find that the information at issue was compiled by an "agency" of the state for purposes of section 730.004. *See* Transp. Code § 730.003(1) (defining "agency"). Accordingly, we determine that the department must withhold the personal information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 730.004 of the Transportation Code.

In summary, the department must withhold the information we have marked under sections 552.130 and 552.101 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

²Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information other statutes make confidential.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/krl

Ref: ID# 207506

Enc. Submitted documents

c: Mr. Bennett Cunningham
Consumer Reporter
KTVT Television
10111 N. Central Expressway
Dallas, Texas 75231
(w/o enclosures)